



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Estate of Ms. Sharon Z. McCully -
Missing Persons Act

File: B-231716

Date: August 18, 1988

DIGEST

A claim made under the Missing Persons Act, 5 U.S.C. §§ 5561-5570 et seq. (Supp. IV 1986), may be paid since the employing agency made a determination of death, which is supported by the findings of a court of competent jurisdiction, and such finding is conclusive on all other agencies.

DECISION

The Regional Counsel, Internal Revenue Service, Southwest Region, Dallas, Texas, has appealed a Claims Group Settlement (Z-2865366, Feb. 18, 1988) which denied a claim by the estate of Ms. Sharon Z. McCully under the Missing Persons Act 5 U.S.C. §§ 5561-5570 et seq. (Supp. IV 1986), on the basis that the claim was too doubtful. Our Claims Group's determination is overruled since the agency made a determination of death which is supported by the findings of a court of competent jurisdiction, and such finding is conclusive on all other agencies.

BACKGROUND

Ms. Sharon Z. McCully was employed by the Internal Revenue Service (IRS), Austin Service Center, Austin, Texas, when she disappeared on December 9, 1984. She has not been seen or heard from since.

Ms. McCully's husband requested payment of the \$524.80 amount that remains outstanding and was owed to her for salary, annual leave, and retirement funds. However, the IRS Office of Fiscal Operations declined payment since a death certificate was not issued, and the IRS forwarded the claim to our Claims Group for adjudication under procedures

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pertaining to the settlement of accounts for deceased civilian employees, 4 C.F.R. part 33 (1988). Our Claims Group denied the claim on the basis that the matter was too doubtful since a death certificate had not been issued, Ms. McCully has not been missing for 7 years, and she has not been declared legally dead.

The IRS Regional Counsel disagrees with this determination by our Claims Group since Mr. McCully was granted Letters of Administration by the Travis County Court, Texas, on July 14, 1986. This order of the court establishes Mr. McCully as administrator of his wife's estate, and entitles him to receipt of any funds on her behalf. Further, Texas probate law grants the court jurisdiction to determine the fact, time and place of death upon application for the grant of letters of administration upon the estate of a person believed to be dead, even if there is no direct evidence of death, so long as there is circumstantial evidence present to the satisfaction of the court. See Tex. Stat. Ann. § 72 (probate). The Texas court made such a determination in this case.

OPINION

When an employee has been in a missing status almost 12 months and no official report of his or her death has been received the head of the agency must have the case reviewed and may make a finding of death. 5 U.S.C. § 5565(a)(2) (1982). When the head of the agency concerned makes a determination as to death or finding of death, such determination is conclusive on all other agencies of the United States. 5 U.S.C. §§ 5566(a)(1), 5566(h) (1982). This Office and the courts have upheld this conclusive determination by the agency in cases involving similar statutory authority pertaining to military members, 37 U.S.C. § 556 (1982). See B-157343, Aug. 17, 1965; Ward v. United States, 646 F.2d 474 (Ct. Cl. 1981); In re Jacobsen's Estate, 143 N.Y.S. 2d 432 (N.Y. Surr. 1955). See also Fugate v. Department of the Interior, 19 M.S.P.R. 506 (1984).

The IRS made a finding regarding the death of Ms. McCully on May 26, 1987, when the IRS Regional Commissioner sent a memorandum to the Director, Austin Service Center, advising that Ms. McCully was presumed dead and her accounts should be settled. Letters of administration had been granted to Mr. McCully on July 14, 1986, by a court of competent jurisdiction which predicated the grant on the basis that Ms. McCully was dead. Thus, the IRS had sufficient basis to likewise make a valid determination.

Accordingly, the claim may be paid on the basis of the determination of death made by the agency.

Wilton A. Fowler
for Comptroller General
of the United States